

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN WENDELL, et al.,

NO. C 09-4124 CW

Plaintiffs,

ORDER GRANTING
UNOPPOSED MOTION
FOR DETERMINATION
OF GOOD FAITH
SETTLEMENT;
APPROVING
STIPULATION
(Docket Nos. 361,
362)

JOHNSON & JOHNSON, et al.,

Defendants.

10 Plaintiffs Stephen and Lisa Wendell brought this products
11 liability action as successors-in-interest to their deceased son,
12 Maxx Wendell, in 2009. In April 2014, they notified the Court
13 that they had reached an agreement to settle all of their pending
14 claims against Defendant Abbott Laboratories. They also informed
15 the Court that they had reached a separate agreement to settle all
16 of their pending claims against Defendants Centocor, Inc. and
17 Johnson & Johnson. As a result of these agreements, the only
18 Defendant remaining in this action is Teva Pharmaceuticals.

19 On May 27, 2014, Plaintiffs filed a joint motion with Abbott
20 Labs for a determination that their settlement agreement was made
21 in good faith under section 877.6 of the California Code of Civil
22 Procedure. Teva filed a statement of non-opposition to the motion
23 on May 29, 2014. The following day, May 30, 2014, all of the
24 parties filed a stipulation that Plaintiffs' settlement agreement
25 with Centocor and Johnson & Johnson was made in good faith under
26 section 877.6. After reviewing these submissions, the Court
27 grants the unopposed motion for a determination of good faith
28 settlement and approves the parties' stipulation.

DISCUSSION

California Code of Civil Procedure section 877.6 provides that any settling party in an action in which it is alleged that there are two or more tortfeasors may seek a court's determination that the settlement was made in good faith. See Tech-Bilt, Inc. v. Woodward-Clyde & Assocs., 38 Cal. 3d 488, 494-95 (1985). To obtain a good faith determination,

a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested.

Cal. Civ. Proc. Code § 877.6(a)(2). A court's good faith determination "shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." Id. § 877.6(c). A party challenging a settlement's good faith has the burden of proof on this issue. Id. § 877.6(d). Federal courts sitting in diversity have discretion to determine whether a settlement is in good faith under this provision. Mason & Dixon Intermodal, Inc. v. Lapmaster Int'l LLC, 632 F.3d 1056, 1064 (9th Cir. 2011).

Here, notice of both of the pending settlement agreements was given to all parties. Teva, Centocor, and Johnson & Johnson have all represented that they do not oppose the settlement agreement between Plaintiffs and Abbott Labs or contest that it was made in good faith. Declaration of Brenton A. Rogers ¶ 6. Likewise, all

1 of the parties have stipulated that the settlement agreement
2 between Plaintiffs, Centocor, and Johnson & Johnson was made in
3 good faith.

4 Thus, in light of the parties' consensus that the pending
5 settlement agreements were made in good faith, the Court finds
6 that the settlement agreements satisfy section 877.6. City of
7 Grand Terrace v. Superior Court, 192 Cal. App. 3d 1251, 1261
8 (1987) ("We are unaware of any reported decision which has
9 reversed an uncontested good faith determination and we,
10 therefore, conclude that only when the good faith nature of a
11 settlement is disputed, it is incumbent upon the trial court to
12 consider and weigh the Tech-Bilt factors."); PAG-Daly City, LLC v.
13 Quality Auto Locators, Inc., 2014 WL 807415, at *2 (N.D. Cal.)
14 (approving unopposed motion for good faith determination and
15 finding it "unnecessary to weigh the Tech-Bilt factors"). As the
16 California Court of Appeal has held, "when no one objects, the
17 barebones motion which sets forth the ground of good faith,
18 accompanied by a declaration which sets forth a brief background
19 of the case is sufficient." Id. The parties have satisfied these
20 requirements here.

21 CONCLUSION

22 For the reasons set forth above, the Court GRANTS Plaintiffs'
23 and Abbott Labs' unopposed joint motion for a determination of
24 good faith settlement (Docket No. 362) and APPROVES the parties'
25 stipulation of good faith settlement (Docket No. 364). In
26 addition, the Court finds that Plaintiffs and Abbott Labs have
27 identified good cause for sealing the terms of their settlement
28

1 agreement and therefore GRANTS their joint motion to seal (Docket
2 No. 361).

3 The parties shall file stipulations of voluntary dismissal of
4 all claims against the settling Defendants according to the terms
5 set forth in their respective settlement agreements.

6 IT IS SO ORDERED.

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8 Dated: 6/10/2014
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CLAUDIA WILKEN
United States District Judge